

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20180001-EI

FUEL AND PURCHASED POWER  
COST RECOVERY CLAUSE WITH  
GENERATING PERFORMANCE  
INCENTIVE FACTOR.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS  
PARTICIPATING: COMMISSIONER GARY F. CLARK  
PREHEARING OFFICER

DATE: Tuesday, October 23, 2018

TIME: Commenced: 10:06 A.M.  
Concluded: 10:52 A.M.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
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1 APPEARANCES:

2 MARIA MONCADA, JOEL BAKER and WILL COX,  
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4 33408-0420, appearing on behalf of Florida Power & Light  
5 Company.

6 MATTHEW R. BERNIER, ESQUIRE, 106 East College  
7 Avenue, Suite 800, Tallahassee, Florida 32301-7740;  
8 DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St.  
9 Petersburg, Florida 33701, appearing on behalf of Duke  
10 Energy Florida, LLC.

11 RUSSELL A. BADDERS and STEVEN R. GRIFFIN,  
12 ESQUIRES, Beggs & Lane, P.O. Box 12950, Pensacola,  
13 Florida 32591-2950; JEFFREY A. STONE, ESQUIRE, One  
14 Energy Place, Pensacola, Florida 32320, appearing on  
15 behalf of Gulf Power Company.

16 JAMES D. BEASLEY and J. JEFFRY WAHLEN,  
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18 Tallahassee, Florida 32302, appearing on behalf of Tampa  
19 Electric Company.

20 BETH KEATING, ESQUIRE, Gunster Law Firm, 215  
21 South Monroe Street, Suite 601, Tallahassee, Florida  
22 32301-1839, appearing on behalf of Florida Public  
23 Utilities Company.

24 JON C. MOYLE, JR., and KAREN PUTNAL, ESQUIRES,  
25 Moyle Law Firm, P.A., 118 North Gadsden Street,

1 APPEARANCES (CONTINUED):

2 Tallahassee, Florida 32301, appearing on behalf of  
3 Florida Industrial Power Users Group.

4 JAMES W. BREW, OWEN J. KOPON AND LAURA A.  
5 WYNN, ESQUIRES, Stone Matheis Xenopoulos & Brew PC, 1025  
6 Thomas Jefferson Street, NW, Eight Floor, West Tower,  
7 Washington, DC 20007, appearing on behalf of White  
8 Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate  
9 - White Springs.

10 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,  
11 DEPUTY PUBLIC COUNSEL; and PATRICIA A. CHRISTENSEN,  
12 ESQUIRE, Office of Public Counsel, c/o the Florida  
13 Legislature, 111 W. Madison Street, Room 812,  
14 Tallahassee, Florida 32399-1400, appearing on behalf of  
15 the Citizens of the State of Florida.

16 SUZANNE BROWNLESS and JOHANA NIEVES, ESQUIRES,  
17 FPSC General Counsel's Office, 2540 Shumard Oak  
18 Boulevard, Tallahassee, Florida 32399-0850, appearing on  
19 behalf of the Florida Public Service Commission Staff.

20 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE  
21 HELTON, DEPUTY GENERAL COUNSEL; Florida Public Service  
22 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
23 Florida 32399-0850, Advisor to the Florida Public  
24 Service Commission.

25

1 P R O C E E D I N G S

2 COMMISSIONER CLARK: All right. Y'all make  
3 this one as easy as you have the other ones. We  
4 are going to be good here.

5 Ms. Brownless, can you make that possible?

6 MS. BROWNLESS: I will do my best, sir.

7 COMMISSIONER CLARK: All right. We've already  
8 read the notice, so at this time, Ms. Brownless,  
9 are there any preliminary matters?

10 MS. BROWNLESS: No, sir, not at this time.

11 COMMISSIONER CLARK: Any of the parties?

12 Okay. Moving through the prehearing order,  
13 beginning with Section I, Case Background.

14 Section II, Conduct.

15 Section III, Jurisdiction.

16 IV, Procedure for Handling Confidential  
17 Information.

18 V, Prefiled Testimony and Exhibits, Ms.  
19 Brownless.

20 MS. BROWNLESS: Yes, sir.

21 The time for witness summaries has been set in  
22 the prehearing order, it's three minutes. So I  
23 would note that for everybody's benefit.

24 In our cases, as well as has been discussed,  
25 FIPUG objects to a witness being considered an

1 expert unless the witness affirmatively states the  
2 subject matter area in which he or she claims  
3 expertise and voir dire, if requested, is  
4 permitted.

5 In its prehearing statement, FRF states that  
6 as of the time of filing its prehearing statement  
7 it does not expect to challenge the qualification  
8 of any witness, however, it believes that each  
9 party that intends to rely upon a witness'  
10 testimony as expert testimony should be required to  
11 identify the field or fields of expertise of such  
12 witness, and to provide the basis for the witness  
13 claimed as expertise.

14 We want to note that on October 18th, FP&L  
15 filed the notice of witness subject matter  
16 expertise which lists the areas of expertise for  
17 all of its witnesses.

18 As has been noted before, Section VI A(8) of  
19 the Order Establishing Procedure requires that a  
20 party identify each witness the party wishes to  
21 voir dire, as well as state with specificity the  
22 portion of that witness' prefiled testimony by page  
23 and line number and/or exhibits to which the party  
24 objects. Neither FIPUG nor FRF has taken that  
25 procedural step, and so we would request that a

1 ruling to that effect be made.

2 COMMISSIONER CLARK: Okay. I think we have  
3 addressed that.

4 Mr. Moyle, same statement?

5 MR. MOYLE: That's right, as referenced above  
6 within docket 02.

7 COMMISSIONER CLARK: Very good.

8 MS. HELTON: Commissioner, you may want to  
9 hear from Mr. Wright, because this also affects his  
10 client.

11 COMMISSIONER CLARK: Okay. Yes, I am sorry,  
12 Mr. Wright.

13 MR. WRIGHT: I don't have anything to add to  
14 this discussion. We don't have any issues on this.  
15 Thank you.

16 COMMISSIONER CLARK: Thank you.

17 MS. BROWNLESS: And, Commissioner, did you  
18 rule previously on this issue?

19 COMMISSIONER CLARK: No. We have not ruled  
20 officially on the issue. Mr. Moyle was basically  
21 saying that he was not going to -- this was not an  
22 issue in terms of how he was handling it. Do you  
23 need --

24 MS. BROWNLESS: Well, I think it probably  
25 would be neater if we had a ruling.

1 COMMISSIONER CLARK: Okay.

2 MR. MOYLE: Yeah, the 02 -- the 02, just to be  
3 clear, the 02 docket, I think things will get  
4 worked out so there won't be contested issues.

5 This is a little different in that, as staff  
6 notes, FPL has filed the notice saying, here are  
7 the areas of expertise of our witnesses.

8 So, you know, they've taken a step toward  
9 doing what FIPUG suggests is properly done, but in  
10 terms of a ruling, I think what staff is saying is  
11 you can't voir dire. You can't ask them at the  
12 beginning, but, you know, as long as you are able  
13 to question the witness and say, tell me about your  
14 background and, you know, if you are professing  
15 expertise in hydrology, and you have a history  
16 major and no science, you know, that can be done  
17 during cross. I don't think we have an issue, so  
18 we would be okay with a ruling that you can't voir  
19 dire.

20 COMMISSIONER CLARK: Okay. Very good.

21 Does that address the concern?

22 MS. HELTON: I think it might be appropriate  
23 for you to make a ruling whether Mr. Moyle or Mr.  
24 Wright can voir dire the witness, and then it will  
25 be up to the presiding officer at the hearing to

1 determine what scope of cross-examination is  
2 appropriate.

3 COMMISSIONER CLARK: Sure. I will do that in  
4 the ruling section. Wouldn't that be the place to  
5 do it?

6 MS. BROWNLESS: Yes, sir. Thank you.

7 COMMISSIONER CLARK: All right. Very good.  
8 Anything else?

9 MS. BROWNLESS: No, sir. Moving on.

10 COMMISSIONER CLARK: Move to Order of  
11 Witnesses, Section VI. Any changes?

12 MS. BROWNLESS: Yes. We are not aware of any  
13 changes at this time. However, we would ask  
14 about -- we believe that most parties have agreed  
15 that the staff witnesses -- and I never say this  
16 gentleman's name correctly, Ojada, Brown, Dobiac  
17 and Terkawi can be excused and their testimony  
18 inserted into the record as though read.

19 My impression is that no one has any objection  
20 to this, and we are seeking confirmation of that at  
21 this time.

22 COMMISSIONER CLARK: Okay. Any objections?

23 MS. MONCADA: No objections.

24 MR. BERNIER: No objection.

25 MR. BADDERS: No objection.



1 MR. MOYLE: No objection.

2 MS. CHRISTENSEN: No objection.

3 COMMISSIONER CLARK: All right. Are there any  
4 other witnesses that can be stipulated to?

5 MS. BROWNLESS: We are working on  
6 stipulations, Type 2 stipulations at this time,  
7 which may result in other witnesses being excused.  
8 So we are going to continue to work on those, sir.

9 COMMISSIONER CLARK: Okay. All right. Let's  
10 move to Basic Positions. No changes.

11 Section VIII, Issues and Positions.

12 MS. BROWNLESS: As has been previously stated,  
13 the OEP requires each party take a position at the  
14 prehearing conference unless good cause can be  
15 shown why they can't do so. If a party's position  
16 in the draft prehearing order is listed as no  
17 position at this time, that party must change it  
18 today or show good cause why it can't take a  
19 position.

20 Absent a showing good cause, the prehearing  
21 order will reflect no position for that party on  
22 that issue. A no position on an issue prohibits  
23 any party cross-examining witnesses with regard to  
24 those issues or briefing on those issues. And I  
25 assume that consistent with what's previously been

1 done, parties will be allowed to file their  
2 positions by noon tomorrow.

3 COMMISSIONER CLARK: Noon tomorrow, yes.

4 MS. CHRISTENSEN: Commissioner.

5 COMMISSIONER CLARK: Ms. Christensen.

6 MS. CHRISTENSEN: Patty Christensen with the  
7 Office of Public Counsel.

8 I just wanted to change our position on 15B to  
9 no position. That's related to the TECO GPIF  
10 2016-17, I believe, adjustments.

11 Also to note that while we took no position on  
12 the Basic Position, Section VII, we do have a  
13 position for Issue 1B, which, of course, if we  
14 brief that issue, we would be taking a basic  
15 position related to that when and if the time  
16 comes.

17 COMMISSIONER CLARK: Okay.

18 MS. BROWNLESS: Thank you.

19 COMMISSIONER CLARK: Are you good with that?

20 MS. BROWNLESS: Yes.

21 COMMISSIONER CLARK: All right. Let's move to  
22 Contested Issues.

23 MS. BROWNLESS: FIPUG has raised two issues  
24 which we've labeled FIPUG Issue A and FIPUG Issue  
25 B. FIPUG Issue A being FPL's -- are FPL's proposed

1 solar projects prudent? And FIPUG Issue B, are  
2 FPL's proposed solar projects needed?

3 I think, at this time, you can hear from the  
4 parties on the appropriateness of including these  
5 issues.

6 COMMISSIONER CLARK: All right. Mr. Moyle,  
7 you want to begin?

8 MR. MOYLE: Yes. Thank you.

9 You know, this commission is a creature of the  
10 Legislature, and the Legislature has charged this  
11 commission with review of issues and how it reviews  
12 issues, including issues which seek additional  
13 rates. And when this body sits to determine  
14 whether additional rates shall be imposed, the  
15 Legislature has said it should use a prudence  
16 standard, and FIPUG is merely suggesting that,  
17 consistent with legislative direction, that a  
18 prudence standard be used. And that is why FIPUG  
19 has proposed a very straightforward simple issue,  
20 are FPL's proposed solar projects prudent?

21 Related is another issue proposed, which are  
22 FPL's proposed solar projects needed? And as you  
23 know, there is a process and rules with respect to  
24 need determination proceedings and reserve margins.  
25 And there are criterion that say, here is the

1 minimum amount of power that should be provided by  
2 utilities. And to look at proposed new sources of  
3 generation without looking at whether the projects  
4 are needed, we believe, is inappropriate, and is  
5 something that should be done, and it's not  
6 consistent with a prudence determination. Prudence  
7 determinations, I think you consider all relevant  
8 facts that parties want to put forward. And  
9 surely, need is a relevant fact as to whether a  
10 generation project should be approved.

11 So those are the two issues that FIPUG would  
12 suggest be included. And a little bit more by way  
13 of background, FIPUG supports renewable energy, and  
14 we've maintained this position with a couple of  
15 caveats. That renewable energy must be  
16 cost-effective, and it must be needed.

17 So if you have renewable energy projects that  
18 are not cost-effective compared to other proposed  
19 renewable energy projects, or if a company is not  
20 making use of renewable energy that would be  
21 available, that might be sourced from waste to  
22 energy, for example, or other types of renewable  
23 energy, the Florida Legislature has recognized a  
24 whole bucket of renewable energy, and we think it's  
25 incumbent on the commission, again, with the idea

1 of saving ratepayers money to say, okay, where  
2 could you get your best bang for your buck with  
3 respect to renewable energy projects.

4 And what you are being asked to consider and  
5 FPL's position in their statement is clear, it  
6 says, quote -- and this is a partial excerpt -- it  
7 says: Inquiries into the prudence and need for  
8 SoBRA eligible projects is not contemplated or  
9 appropriate under the rate settlement agreement.

10 So what FPL is suggesting is you take your  
11 statutory duties and set them aside, and only look  
12 at these projects based on certain criteria that  
13 FPL and other parties to the settlement agreement  
14 crafted and put into that settlement agreement.  
15 And FIPUG respectfully doesn't think that's  
16 consistent with the statute, consistent with the  
17 law in the state of Florida; and thinks that the  
18 Commission should look at the FPL projects in a  
19 broader fashion consistent with the statutory  
20 duties and obligations that the Legislature has  
21 suggested and said the Commission follow when  
22 making decisions with respect to new rates.

23 So that's, you know, some background with  
24 respect to these issues. These issues are, just to  
25 be full and fair, are being considered by you, but

1           they are also being considered elsewhere now, and,  
2           you know, we think it's important to raise them and  
3           preserve them in this proceeding as well.

4           COMMISSIONER CLARK: Understood. Thank you.

5           FPL.

6           MS. MONCADA: Thank you, Commissioner.

7           FPL submitted a written response FIPUG's  
8           motion to include these issues on May 18th, and I  
9           will go ahead and address some of those points now.

10          FIPUG's request to introduce the issues of  
11          need and prudence into the SoBRA proceeding  
12          directly contravene the Commission's final order  
13          approving FPL's 2016 rate case settlement.

14          That settlement agreement describes with  
15          particularity the SoBRA mechanism, both in terms of  
16          assistance substance as well as procedure. It  
17          states when FPL seeks recovery for SoBRA projects  
18          under 75 megawatts, the company must file a  
19          petition in the fuel docket, and it also states  
20          expressly, and I will quote here: "The issues for  
21          determination are limited to the cost-effectiveness  
22          of each such project, i.e., will the project lower  
23          the projected system cumulative present value  
24          revenue requirements, or CPVRR, as compared to such  
25          CPVRR without the solar project, and the amount of

1 revenue requirements and the appropriate percentage  
2 increase in base rates needed to collect the  
3 estimated revenue requirements."

4 Those three issues are included in the draft  
5 prehearing order for your determination. They are  
6 identified as Issues 2P, 2Q and 2R.

7 There are two other points here that are  
8 important with regard to the Commission's final  
9 order approving the settlement agreement. And the  
10 first is that the Commission provided an open and  
11 robust process for all parties to examine the  
12 settlement agreement and any of its terms, and  
13 SoBRA mechanism was prominent among those terms  
14 that could have been examined or challenged by any  
15 party, including FIPUG, and FIPUG chose not to  
16 oppose the settlement. It never challenged the  
17 SoBRA mechanism and never stated that there were  
18 any legal infirmities to it.

19 Second, that final order was appealed to the  
20 Florida Supreme Court, not by FIPUG, but by the  
21 Sierra Club, who argued, like FIPUG does today,  
22 that the Commission could not approve certain  
23 expenditures without undertaking a prudence  
24 determination. And in that appeal, the Sierra Club  
25 pointed to the same statutory provision that Mr.

1 Moyle did this morning just a few minutes ago.

2 And the Court flatly reflected that argument.  
3 It held that the Commission applied the correct  
4 standard in approving the settlement, which is  
5 whether the settlement is in the public interest as  
6 a whole. And it found that the Commission's  
7 conclusion that the settlement, as a whole, is in  
8 the public interest was supported by the evidence.  
9 This conclusion includes the SoBRA provision as  
10 part of that settlement.

11 So the upshot of all of this is that that  
12 final order is now subject to administrative  
13 finality, and that means two things. It means that  
14 the terms of the settlement are dispositive and  
15 that it cannot be modified. And for those reasons,  
16 FPL asks that the Commission decline FIPUG's  
17 request to add the two issues.

18 MS. HELTON: Commissioner, I think there might  
19 be a couple of other parties that might be affected  
20 by this, so I don't know if Mr. Wright wanted to  
21 address the inclusion of the issue, or Ms.  
22 Christensen.

23 COMMISSIONER CLARK: Sure. We are going to  
24 allow anybody that would like to address it.

25 MR. WRIGHT: Thank you for the opportunity.



1 This is not our issue today. Thanks.

2 COMMISSIONER CLARK: Ms. Christensen.

3 MS. CHRISTENSEN: OPC has taken no position on  
4 this issue.

5 COMMISSIONER CLARK: Okay.

6 MR. WRIGHT: As has the Retail Federation.

7 COMMISSIONER CLARK: Any other party wish to  
8 address it? Okay.

9 MR. MOYLE: If I could just have a brief --

10 COMMISSIONER CLARK: Mr. Moyle.

11 MR. MOYLE: -- rebuttal to the comments of  
12 FPL. And I appreciate the folks who we are  
13 normally aligned with. They signed the settlement  
14 agreement, FIPUG did not sign the settlement  
15 agreement, so we think that we are able to bring  
16 these issues properly before you and presently the  
17 Florida Supreme Court.

18 The order that FPL is referencing that says,  
19 oh, you should have -- you should have raised this  
20 point back when we had this settlement order set  
21 out a SoBRA mechanism and gave FPL the option to  
22 move forward with these.

23 It was an option, and like options on  
24 purchasing real estate or other things, the option  
25 rested with FPL. At no point in time did they say,

1 we are absolutely going forward and doing this, or  
2 we may do this. It was just an option that was  
3 part of that settlement agreement that FIPUG didn't  
4 sign.

5 And so the -- you know, the time to challenge  
6 that, it was not when the option was vested, we  
7 contend. It was when FPL decided to exercise its  
8 option and bring these projects forward before you,  
9 which is why we are here today.

10 I mean, the settlement agreement is a couple  
11 years old, but here today are projects that you are  
12 being asked to review, and we don't think it's  
13 fair. I think there has been some change in the  
14 Commission, Commissioner Fay. I mean, you know, if  
15 you take FPL's position, you are saying, well, you  
16 don't really have much to do here because your  
17 hands are tied because of this settlement  
18 agreement, and, you know, even if FPL is at  
19 30 percent reserve margin, and this is going to  
20 add -- that's a hypothetical, I am not asserting  
21 that as a fact.-- but if they are at 30 percent  
22 reserve margin, this is going to take them to 32.  
23 You know, you can't really say, well, is now really  
24 the time? Should you wait and maybe let some  
25 growth come in before you put these in?

1           So with respect to the, you know, the timing  
2           issue, we reject that as that that was a time we  
3           think it was premature and wasn't ripe for your  
4           review, or judicial review at that point in time.

5           But, you know, this is an issue that is an  
6           important issue because there is a lot of money  
7           involved with it. The SoBRA projects represent a  
8           lot of money to a lot of ratepayers. And, again,  
9           FIPUG supports renewable energy, but it should be  
10          done right. It should be done in a cost-effective  
11          way. And it should be done when the projects are  
12          needed.

13          So thank for you that chance to rebut.

14          COMMISSIONER CLARK: Thank you, Mr. Moyle.

15          Okay, any other party? FPL.

16          MS. MONCADA: 30 seconds.

17          COMMISSIONER CLARK: Wrap up, got it.

18          MS. MONCADA: Yes, I will be very quick.

19          What was approved by the Commission in that  
20          2016 order was the SoBRA mechanism. It was not any  
21          planned or any project in and of itself. It was  
22          the mechanism. And at that time, FIPUG could have  
23          opposed the mechanism, even though no plant had  
24          been presented to the Commission specifically.

25          Thank you.

1           COMMISSIONER CLARK:  These two separate  
2           issues.  One issue being need, and one issue being  
3           cost.  Are you saying that those issues are --  
4           should be taken together, or should they be  
5           separate issues?

6           I guess let me go back to staff here in terms  
7           of your recommendation.

8           MS. BROWNLESS:  Yes, sir.

9           I want to address the need versus cost.  There  
10          are specific issues in this docket that deal with  
11          the cost of the 2019 SoBRA projects, and so that's  
12          being covered.

13          If you remember what the settlement agreement  
14          said was that the SoBRA -- that FP&L could do so  
15          many megawatts of SoBRA projects in the year 2018  
16          and the year 2019 contingent upon those projects  
17          being cost-effective.  And the way they were going  
18          to measure cost-effectiveness was under a certain  
19          dollar per kWh.  That was one criteria.  And the  
20          second criteria was whether inclusion of those  
21          projects resulted in a higher overall cost to the  
22          system than not.  FP&L has presented evidence in  
23          this proceeding with regard to the two prongs of  
24          the test that was laid out in the settlement  
25          agreement.

1           The way the staff reads the settlement  
2           agreement, if those two issues are proven -- in  
3           other words, that it's less than the dollar amount  
4           per kWh -- and if it's cost-effective, then the  
5           projects are approved.

6           So our position is that whatever prudence for  
7           those projects, the issue of prudence has already  
8           been determined when you approved the 2016 rate  
9           case settlement agreement. And for those reasons,  
10          we believe that these two issues are not  
11          appropriate to be included, but that doesn't mean  
12          that Mr. Moyle will not get to ask questions about  
13          the analysis that shows they are cost-effective  
14          because those issues are in the docket.

15          COMMISSIONER CLARK: Okay. I have a couple  
16          of, I guess, concerns I need to think through on  
17          that. I tend to agree that the need determination  
18          is probably not -- I think the need determination  
19          is less relevant to this particular decision than  
20          maybe the costs are, but let me think through that  
21          one for just a couple of minutes.

22          Anybody else? Any other points on this?

23          Mr. Moyle.

24          MR. MOYLE: Just for, I think for clarity  
25          sake. So, you know, the two issues that we are

1 putting forward is the prudence issue and the need  
2 issue. And Suzanne Brownless is right. What she  
3 said is, is that, you know, the settlement  
4 agreement said anything under \$10 -- that's not the  
5 right number -- but anything under \$10 is deemed,  
6 you know, to be cost-effective, but that was done  
7 at a point in time. It's like saying, you know,  
8 the stock of Company X is, you know, is a good buy  
9 at this number, and it doesn't allow you to take  
10 into account what has happened in the time period  
11 since that settlement agreement; because if it's  
12 simply you have to say is, it under \$10, and that's  
13 what the settlement agreement says. Well, what if  
14 the number now is \$4, and the market is \$4, and  
15 everyone says, yeah, it's a \$4 market now and FPL  
16 is at \$9.50. Under the static number that's in the  
17 settlement agreement, yes, that would still meet  
18 the terms of the settlement agreement.

19 Would it be prudent if the market is at \$4 and  
20 they are at double that at 9.50? I would not think  
21 so. And, you know, the real issue is is are you  
22 all able to look at what are the market conditions  
23 and say, well, geeze, it's \$4 now. You guys need  
24 to be closer to \$4 than the 9.50. Or do you  
25 myopically look at it and say, it was 10 bucks,

1           it's under 10 bucks, that's cost-effective for the  
2           terms, we don't have any more work to do?

3           COMMISSIONER CLARK: FPL, final rebuttal.

4           MS. MONCADA: Yes, thank you.

5           The agreement specifically addresses actually  
6           what Mr. Moyle is referring to about changes in the  
7           market, et cetera. When -- in paragraph 10A, it  
8           says not only that the project cannot exceed 17.50  
9           per kilowatt, but it also states that the costs --  
10          I will read it exactly: "The costs of the  
11          components, engineering and construction for any  
12          solar project constructed by FPL pursuant to this  
13          paragraph shall be reasonable, and in no event,  
14          shall the total cost of such project exceed 17.50  
15          per kilowatt."

16          So the reasonableness of the cost is at issue  
17          and can be questioned by -- Mr. Moyle can question  
18          the witness about that.

19          COMMISSIONER CLARK: Okay. I think I have  
20          enough information.

21          Any other final points?

22          MS. BROWNLESS: No, sir.

23          COMMISSIONER CLARK: Okay. Let's move to the  
24          next item. Item IX, Exhibit List.

25          MS. BROWNLESS: I'm sorry, sir, I didn't hear

1           that last part.

2           COMMISSIONER CLARK: That's fine. Exhibit  
3 List.

4           MS. BROWNLESS: Yes, sir.

5           We have prepared a comprehensive exhibit list,  
6 which includes all prefiled exhibits and also  
7 includes exhibits staff wishes to introduce into  
8 the record. Staff will work with the parties to  
9 determine if there are any objections to the  
10 comprehensive exhibit list or any of staff's  
11 exhibits being entered into the record.

12           And since we had a ruling that staff's audit  
13 witnesses could be excused, I am assuming everybody  
14 is all right with putting staff's audit witnesses  
15 and exhibits into the record. And if you could  
16 confirm that, that would be great.

17           COMMISSIONER CLARK: Any objections?

18           MS. MONCADA: No objection from FPL.

19           MR. BERNIER: No objection.

20           MR. MOYLE: No objection from FIPUG.

21           MS. CHRISTENSEN: No objection, OPC.

22           MR. WRIGHT: No objection.

23           MR. BREW: No objection from PCS.

24           COMMISSIONER CLARK: Okay. Thank you.

25           Next item is -- anything else under exhibit



1 list, any of the parties?

2 All right. Move to Proposed Stipulations,  
3 Section X.

4 MS. BROWNLESS: Okay. We are in the process,  
5 as I stated before, of circulating a list of  
6 proposed stipulations, and we are going to continue  
7 to work with the parties to reach stipulations on  
8 the outstanding issues.

9 Obviously, the proposed stipulations are of  
10 two type, either stipulation was which all parties  
11 agree, or stipulations in which the utility agrees  
12 with the staff positions and all other parties take  
13 no positions.

14 In the final prehearing order, they will be  
15 listed as such, divided up that way. And the list  
16 of stipulations entered into after the prehearing  
17 order is issued will be provided to all  
18 Commissioners prior to the hearing.

19 It does look at this time as if the parties  
20 will be able to reach agreement on the bulk of all  
21 the issues in this docket. And I want to take a  
22 minute to go through the following issues that  
23 continue to be at issue.

24 The first set are the hedging issues, that's  
25 1A, 2A, 4A and 5A.

1           The second is DEF Bartow replacement, power  
2           which is 1B.

3           The third set are FPL 201 SoBRA issues, 2M,  
4           2N, 2O, 24D, 24E.

5           The next are FPL 2019 SoBRA issues, 2P, 2Q,  
6           2R, 2S.

7           Then we have TECO's GPIF corrections Issues  
8           15A and 15B. And I believe some parties have  
9           changed their positions with regard to that, so  
10          that might be one that can be stipulated.

11          There is the DEF fuel cost recovery factors,  
12          and I think that there is movement on that as well,  
13          Mr. Bernier.

14          MR. BERNIER: Yes, that's correct.

15          This is Issue 22, if I am thinking about it  
16          correctly, and I think we reached with PCS  
17          Phosphate an agreement that I don't know if the  
18          other intervenors have had a chance to weigh in on  
19          yet, but I will let Mr. Brew speak to that, but I  
20          think we are good on 22.

21          MR. BREW: Yes. PCS and Duke have talked  
22          about stipulation language that would resolve our  
23          concerns, and I think we are in agreement. We  
24          haven't reviewed it with the other parties yet, and  
25          we will do so.

1 COMMISSIONER CLARK: Okay.

2 MS. BROWNLESS: Great.

3 COMMISSIONER CLARK: Any of the other parties  
4 have a position on it? FPL.

5 MS. MONCADA: No, I am sorry, I wanted to talk  
6 about the hedging issues when it's appropriate.

7 MS. BROWNLESS: We are getting to that.

8 MS. MONCADA: Okay. When it's appropriate. I  
9 apologize.

10 MS. BROWNLESS: Okay. And then of course we  
11 have the Issue A and B, which we will get a ruling  
12 on later.

13 Are there any additional issues that anyone is  
14 aware of today, other than those I have listed,  
15 that are in contention?

16 COMMISSIONER CLARK: Any other issues?

17 MR. WRIGHT: Commissioner, I will just let you  
18 know, I think we are going to be fine on 15A and  
19 15B. I just need to have a little more  
20 reconnoitering with my colleagues.

21 MS. BROWNLESS: Thank you.

22 COMMISSIONER CLARK: Okay.

23 MS. BROWNLESS: With regard to the wonderful  
24 hedging issues, 1A, 2A, 4A and 5A, I want to take a  
25 minute to review OPC, FIPUG's and FRF's position on

1           these issues, and talk about how to handle them  
2           procedurally at the final hearing.

3           Last year, each of these parties stated that  
4           they did not need to cross-examine witnesses, and  
5           they did not want to brief the issues, and they  
6           were all right with having a bench vote on these  
7           issues at the beginning of the final hearing, and I  
8           just wanted to know if whether that's still their  
9           position today.

10           COMMISSIONER CLARK: Okay. Parties. Mr.  
11           Wright.

12           MR. WRIGHT: That's satisfactory to the  
13           Florida Retail Federation. Thank you. We just --  
14           we can't support something that says that these  
15           hedging contracts were prudent. That's it.

16           COMMISSIONER CLARK: OPC.

17           MS. CHRISTENSEN: I believe OPC has taken no  
18           position, or no position at this time, but we would  
19           still also be supportive of the procedure that Ms.  
20           Brownless outlined.

21           COMMISSIONER CLARK: SACE? Anybody?

22           MR. MOYLE: FIPUG is not in a position to be  
23           able to agree with that today. We are in some  
24           conversations, and I think those will continue.  
25           And I am happy to just share with you, as the

1 prehearing officer, you know, the concern.

2 There is -- I am being told by the utilities  
3 that, you know, hedging is being not continued per  
4 the settlement. There are settlement agreements  
5 everywhere that says no more hedging, no more  
6 hedging, and what is -- there are some roll-offs of  
7 hedging. So it's taken a while on some of these  
8 settlement agreements.

9 You know, my client has said, we really don't  
10 like hedging. We don't want hedging to continue,  
11 and has asked is it dead? Is it, you know, black  
12 flag dead, as the saying is. And I can't answer  
13 that yes because, you know, the issues continue to  
14 appear in this docket. And there is a generic  
15 docket that is out there. And the Tampa Electric  
16 Company has filed a motion to close that generic  
17 hedging docket, and the Commission has not acted on  
18 that. So it -- you know, the hedging issue is not  
19 there.

20 And FIPUG may ask some of the witnesses, I  
21 think, you know, how are you doing on hedging? I  
22 think some of them lost money again. And, you  
23 know, if the issue is not dead, then we are  
24 somewhat reluctant to walk away from it, but if it  
25 is dead, or a signal can be sent it's dead, then,

1           you know, we can scratch this off the list and move  
2           on.

3           COMMISSIONER CLARK:   Okay.   FPL, you want  
4           to --

5           MS. MONCADA:   Sure, just a question for Mr.  
6           Moyle, whether you would require the witness to  
7           appear in order to address your issue?

8           MR. MOYLE:   At this time, absent a  
9           satisfactory resolution with respect to the overall  
10          question, I am not in a position to excuse  
11          witnesses.

12          COMMISSIONER CLARK:   So if the parties can  
13          confirm there are no new hedging contracts and  
14          there have been no new hedging contracts through a  
15          certain point, then would you agree to the  
16          position?

17          MR. MOYLE:   And if they would agree to say, we  
18          don't feel a need to keep the generic hedging  
19          docket open and would support its closing, then I  
20          would think it would be okay.

21          COMMISSIONER CLARK:   FPL.

22          MS. MONCADA:   We support closing the generic  
23          hedging docket.

24          MR. BERNIER:   Second.

25          MR. BADDERS:   Gulf is in a different posture

1           only because we are not a party to that docket, and  
2           so we have no position. And our testimony  
3           affirmatively states we have not entered into any  
4           new hedges since the moratorium.

5           MR. BEASLEY: Tampa Electric filed a motion to  
6           close the docket. Pardon my voice.

7           MR. BERNIER: And I will add that DEF's  
8           testimony also says that we have not entered into  
9           any new hedges since the moratorium was begun.

10          MS. MONCADA: Same for FPL.

11          MR. MOYLE: Well, that's helpful. I think if  
12          I could get a motion and a ruling to that effect, I  
13          think I would be good. I don't know if you have  
14          the ability to do that as the prehearing officer,  
15          but nothing ventured, nothing gained.

16          COMMISSIONER CLARK: That's right.

17          MR. HETRICK: Mr. Chairman, I think Jay Brew,  
18          does he have any comment on this?

19          COMMISSIONER CLARK: Mr. Brew.

20          MR. BREW: Thanks for throwing me under the  
21          bus.

22          PCS had expressed concerns in the prior  
23          proceedings that it wasn't the concept of hedging  
24          that was the flaw, it was the mechanics that were  
25          being employed, which was the whole point to look

1 at on the generic docket. So -- but we were a  
2 party to the stipulation with Duke that said they  
3 would not hedge going forward, and we stand by our  
4 position there.

5 COMMISSIONER CLARK: Okay. Any other  
6 comments?

7 MR. HETRICK: Mr. Chairman.

8 COMMISSIONER CLARK: Yes.

9 MR. HETRICK: I would just like to make this  
10 statement, that notwithstanding any fallout issues  
11 that may affect this docket, this is not the docket  
12 to resolve the policy issue regarding hedging.

13 COMMISSIONER CLARK: Great point. But if it  
14 can resolve this issue with the statement and take  
15 that off the table, are we in the clear there, Mr.  
16 Hetrick?

17 MR. MOYLE: The only problem is is you have a  
18 pending motion in another docket that hasn't been  
19 ruled on in months and months and months.

20 MR. HETRICK: Again, I don't believe that's  
21 relevant to what goes on this in this docket. That  
22 policy issue can stay alive, but in this docket, we  
23 know that all the utilities do have settlement  
24 agreements out there that currently prohibit  
25 hedging. And to the extent that prior hedging has



1           taken place that's outside the scope of that, you  
2           know, that plays out as it plays out.

3           MS. BROWNLESS: Yeah, these -- the costs that  
4           are in this docket -- first of all, FPL has zero  
5           costs in this docket because they are not  
6           initiating any new hedges, and their old hedges  
7           have run through. So you are only talking about  
8           residual costs. You are not talking about anything  
9           new, as everybody has stated here.

10           So I guess if we need to keep them and the  
11           witnesses need to come, then that's fine, but it  
12           does seem to be a bit of a waste.

13           MR. WRIGHT: Commissioner Clark.

14           COMMISSIONER CLARK: Mr. Wright.

15           MR. WRIGHT: Thank you, Commissioner.

16           I do want to make it clear that we do not  
17           intend to cross any of the witnesses. None of the  
18           witnesses have to appear on account of the Florida  
19           Retail Federation, and we do not intend to brief.  
20           We just can't stipulate to the -- we can't stand by  
21           and let this stipulation as phrased, as stated, go  
22           into effect without objecting to it, but that's all  
23           I am going to do.

24           COMMISSIONER CLARK: Understood.

25           MR. WRIGHT: Thank you.

1 COMMISSIONER CLARK: Mr. Moyle.

2 MR. MOYLE: I guess -- we've used an analogy.  
3 Everyone said the hedging body has no life in it.  
4 It's dead. And I have said, do we have -- can I  
5 just see a death certificate, and there is not one.  
6 And as you have heard, you know, that's -- your  
7 General Counsel was saying, this isn't the time or  
8 the place to do it.

9 So I am just trying, you know, to get the  
10 death certificate on hedging, and I am not able to  
11 do it, which makes me nervous, and it makes my  
12 client nervous.

13 COMMISSIONER CLARK: Well, and I think Mr.  
14 Hetrick is right, it's not something -- that  
15 particular issue, we can't decide here today. The  
16 bottom line question is, do you want the witnesses  
17 to appear so you can address the hedging issue with  
18 them?

19 MR. MOYLE: Yeah. Let me continue to have  
20 some conversations with the utilities about it.

21 COMMISSIONER CLARK: Okay.

22 MR. MOYLE: They -- I appreciate their  
23 representation today that all of them favor the  
24 closing of the generic docket. That's more than I  
25 have had prior to today, so that's a step forward.

1 But let me think about it and have some  
2 conversations if I could. So I am not excusing  
3 witnesses today.

4 COMMISSIONER CLARK: As of yet, got it. You  
5 will do that later.

6 MS. BROWNLESS: Oakie-doke.

7 COMMISSIONER CLARK: All right. Section X,  
8 Pending Motions. Oh, I'm sorry.

9 MR. BREW: Commissioner Clark, just to be  
10 clear. PCS does not intend to cross the Duke  
11 witnesses on the hedging issue, so they can be  
12 excused at least on our account.

13 COMMISSIONER CLARK: Okay. Anybody else? I  
14 am sorry, I went too fast on that one.

15 All right. We are all good. Let's move to  
16 Section XI, Pending Motions.

17 MS. BROWNLESS: Thank you. On October 19th,  
18 Public Utilities -- the Florida Public Utilities  
19 Company filed a motion to accept supplemental  
20 direct testimony and revised prehearing statement  
21 in order to reflect the 2018 tax settlement entered  
22 into between OPC and FPUC on October 16th.

23 The 2019 supplemental testimony of Michael  
24 Cassel identifies the tax savings associated with  
25 the passage of Tax Cuts and Jobs Act of 2017 and

1 modifies FPUC's fuel factors to reflect those  
2 savings.

3 FPUC has modified its prehearing statement  
4 positions to provide alternative positions for  
5 issues 10, 18, 20 and 22 based on the approval or  
6 disapproval of the 2018 tax settlement. And our  
7 idea here is that those are the issues that are  
8 affected. And if the settlement gets ultimately  
9 approved, we will know what the numbers are. And  
10 if the settlement ultimately gets disapproved, we  
11 will know what the numbers are. So we can go ahead  
12 and put those into effect when the tax docket is  
13 ultimately resolved.

14 COMMISSIONER CLARK: Okay. All in agreement?  
15 Okay.

16 Anything else under Pending Motions?

17 MS. BROWNLESS: We just need a ruling on the  
18 motion.

19 COMMISSIONER CLARK: Okay.

20 All right. Let's move to Section XII,  
21 Confidentiality Orders.

22 MS. BROWNLESS: We don't have any pending  
23 confidentiality orders at this time.

24 COMMISSIONER CLARK: All right. Post-Hearing  
25 Procedures.

1 MS. BROWNLESS: If the parties agree to waive  
2 briefs at the end of the hearing, the Commission  
3 may make a bench decision for this portion of the  
4 docket.

5 COMMISSIONER CLARK: All right. Briefs are  
6 going to be limited to 40 pages, and opening  
7 statements to three minutes. Briefs are due on  
8 November -- is it 17th?

9 MS. BROWNLESS: 16th.

10 COMMISSIONER CLARK: November 16th.

11 Any questions?

12 All right. We are going to take a five-minute  
13 recess, and we will come back and I will issue the  
14 rulings that we need to make today.

15 MS. BROWNLESS: Thank you.

16 COMMISSIONER CLARK: Return at 10 -- I can't  
17 see the clock -- 53.

18 (Brief recess.)

19 COMMISSIONER CLARK: All right. If everyone  
20 is ready, we will wrap this thing up.

21 Thank you for your indulgence there while I  
22 straightened my notes out here.

23 We are going to limit the -- when it comes to  
24 rulings, we are going to limit the -- opening  
25 statements are going to be three minutes per party,

1 unless the party chooses to waive its statement.

2 FIPUG is prohibited from conducting voir dire.

3 The time to file answers are -- is tomorrow at  
4 noon.

5 FIPUG's -- excuse me, FPUC's motion to  
6 supplement testimony is granted.

7 And I am going to hold the FIPUG A and B issue  
8 and take it under advisement and rule on it in the  
9 prehearing final order. There is a couple of  
10 things I really want to kind of dig into on that.

11 All right. Any questions?

12 All right. Staff, are there any other matters  
13 that need to be addressed at the prehearing?

14 MS. BROWNLESS: Not, not that I am aware of.

15 COMMISSIONER CLARK: Any of the parties have  
16 anything to address?

17 Seeing none, we will adjourn this hearing.

18 This concludes the prehearing conference.

19 Thank you for participating.

20 MS. BROWNLESS: Thank you.

21 (The prehearing concluded at 10:52 A.M.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA     )  
COUNTY OF LEON        )

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 1st day of November, 2018.




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DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #GG015952  
EXPIRES JULY 27, 2020